



# City of Chicago



O2018-196

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	1/17/2018
<b>Sponsor(s):</b>	Burke (14) Laurino (39)
<b>Type:</b>	Ordinance
<b>Title:</b>	Amendment of Municipal Code Section 4-6-310 concerning whistleblower protections for pharmaceutical representatives
<b>Committee(s) Assignment:</b>	Committee on License and Consumer Protection

**ORDINANCE**

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, pharmaceutical drug companies have been under fire for misrepresenting the efficacy of their blockbuster drugs and their approved uses; and

WHEREAS, newspapers and politicians attributed part of the blame for the opioid epidemic to misrepresentations of opioids' addictiveness and approved uses; and

WHEREAS, in a Chicago Tribune article published December 15, 2017 titled "Drug rep says she warned of dangers," Allison Zayas, a drug representative for AstraZeneca, reported that doctors in New York City made her aware of at least ten deaths due to the joint use of the antipsychotic Seroquel and the opioid methadone; and

WHEREAS, Allison Zayas reported sharing the information with her employer, AstraZeneca, who actively ignored her reports and encouraged her to continue to promote the drugs for sale, without warning doctors of adverse reactions; and

WHEREAS, Allison Zayas, alarmed by AstraZeneca's inaction and disregard, quit her job and filed a whistleblower lawsuit; and

WHEREAS, the Chicago City Council passed a Pharmaceutical Representative Licensing Ordinance in 2017 to increase oversight and protect patients and doctors from misrepresentations that could harm patients; and

WHEREAS, the Ordinance was an important component in the concentrated effort to contain pharmaceutical and opioid dangers; and

WHEREAS, the Ordinance could be further enhanced by providing whistleblower protections to pharmaceutical representatives who display integrity and honesty, even when their employer does not; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. Chapter 4-6-310 of the Municipal Code of Chicago is hereby amended by inserting the underscored language as follows:

4-6-310 Pharmaceutical representatives.

*(Omitted language not affected by this ordinance)*

(h) *Ethical standards.*

The Commissioner of Public Health or his designee shall produce a list of ethical standards for pharmaceutical representatives that shall be incorporated into the rules and published on the City's website. In addition to those rules, a pharmaceutical representative shall not:

- (1) Engage in any deceptive or misleading marketing of a pharmaceutical product, including the knowing concealment, suppression, omission, misleading representation, or misstatement of any material fact;
- (2) Use a title or designation that could reasonably lead a licensed health professional, or an employee or representative of a licensed health professional, to believe that the pharmaceutical detailer is licensed to practice medicine, nursing, dentistry, optometry, pharmacy, or other similar health occupation, in the City of Chicago, unless the pharmaceutical detailer currently holds such a license; or
- (3) Attend patient examinations without the consent of the patient.

(i) *Whistleblower Protections.*

- 1) A pharmaceutical wholesaler shall not take any retaliatory action against a pharmaceutical representative because he or she does any of the following:
  - a. Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a pharmaceutical wholesaler that the employee reasonably believes is in violation of a law, rule, or regulation; or
  - b. Provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, rule, or regulation by a pharmaceutical wholesaler; or
  - c. Assists or participates in a proceeding to enforce the provisions of this Section.
- 2) A violation of this Section may be established only upon a finding that: (1) the pharmaceutical representative engaged in conduct described in this Section, and (2) this conduct was a contributing factor in the retaliatory action alleged by the pharmaceutical representative. There is no violation of this Section, however, if the pharmaceutical wholesaler demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct.
- 3) *Private Right of Action.* With respect to this subsection 4-6-310, an aggrieved employee may bring an action in a court of competent jurisdiction for violations of the rights set

forth herein. The pharmaceutical representative may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following: reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position; two times the amount of back pay; reinstatement of full fringe benefits and seniority rights; and payment of reasonable costs and attorney's fees.

- 4) The rights, obligations, and remedies set forth in this subsection 4-6-310 shall be cumulative and in addition to any others available at law or in equity.

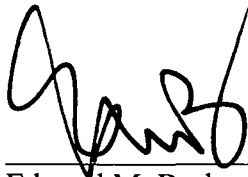
(j) Waiver. Any waiver by a pharmaceutical representative of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Provided, however, the requirements of this Section 4-6-310 may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

(+) (k) *Rules.* The Commissioners of Public Health and Business Affairs and Consumer Protection shall have the authority to promulgate rules necessary to implement their respective powers and duties under this Article.

(+) (l) *License – Suspension and revocation.* A violation of this section may result in license suspension or revocation in accordance with Section 4-4-280 of this Code. No license suspended or revoked pursuant to this section shall be reinstated until all code violations related to the suspension or revocation have been remedied and all assessed penalties and fees have been paid. No person whose pharmaceutical license under this chapter is revoked for any cause shall be granted a license under this section for a period of two years from the date of revocation.

(\*) (m) *Violation – Penalty.* Any person violating any of the provisions of this chapter shall be fined not less than \$1,000.00 nor more than \$3,000.00 for each offense. Every day such violation continues shall constitute a separate and distinct offense.

SECTION 3. This ordinance shall be in full force and effect immediately upon passage and publication.



Edward M. Burke  
Alderman, 14<sup>th</sup> Ward

